

STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION  
(Pre-publication of Notice Statement)

Amend Section 120.7  
Title 14, California Code of Regulations  
Re: Commercial Sea Urchin Fishing

I. Date of Initial Statement of Reasons: January 2, 2006

II. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: February 3, 2006  
Location: Sacramento

(b) Discussion Hearing: Date: March 3, 2006  
Location: Riverside

(c) Adoption Hearing: Date: April 7, 2006  
Location: Sacramento

III. Description of Regulatory Action:

(a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

State law (Section 9054, Fish and Game Code) authorizes the Commission to set the conditions for issuance of and to limit the number of commercial sea urchin permits to prevent over utilization or to insure efficient and economic operation of the fishery on a state-wide basis or in select geographic areas.

Existing regulation (subsection 120.7(c)(2)) sets the renewal deadlines for sea urchin diving permits as June 30 of each year with no penalty and after June 30 but before August 1 with a \$50 late fee. Applications received or postmarked after July 31 are not considered.

The commercial fishing license year is April 1 to March 31. To provide the commercial fishing industry with a degree of consistency and uniformity the department has been setting the renewal deadlines for limited entry fisheries generally as April 30 of each year without penalty, up to 30 days late with a \$50 penalty, and no renewal after that grace period.

To bring the renewal dates for sea urchin diving permits in line with those general dates, the proposed amendments would change the renewal dates to April 30

without penalty and May 31 with a \$50 penalty. Applications received or postmarked after May 31 would not be considered.

Commission regulations (subsection 120.7(d), Title 14, CCR) set the conditions for new sea urchin permit issuance. Currently, the number of new permits that become available each year for issuance is one-tenth (1/10) the number of previous permits not renewed. Once the number of permits issued falls below 300 (a de facto capacity goal) the number of new permits that become available each year will equal the number of previous permits not renewed.

The sea urchin industry has been concerned about the capacity goal for some time now and has been waiting for the Department of Fish and Game (Department) to prepare a sea urchin fishery management plan (FMP) that would include an examination of the current de facto capacity goal.

The Department, however, has not begun to prepare the FMP as we enter 2006, due primarily to lack of staff and funds, a condition not likely to change in the foreseeable future. The California Sea Urchin Commission has expressed concern about possible excess capacity in the fishery should the number of permits fall below 300, and is asking the Fish and Game Commission for regulatory action to provide continued access into the fishery at the level of one new permit for each ten permit holders who leave the fishery (the existing regulation), until such time as the FMP can be prepared. If an examination of the capacity goal question at that time shows that 300 is the appropriate number it will be easy to allow new entrants into the fishery at that time. However, should the appropriate number be something less than 300 it could require significant added time or expense to reach that smaller number of divers.

Existing regulation (subsection 120.7(e)) specifies the Department's License and Revenue Branch street address for the purpose of mailing applications.

The office is expected to move to a new location at some time in 2006 and the proposed amendments would say that applications be mailed to the address specified in the application.

Existing regulation (subsection 120.7(l)) provides for open and closed fishing seasons ranging from two to seven days per week varying by month. Until recently, during the month of July, only Monday and Tuesday were open in southern California and no days were open in northern California. In the last regulatory change for this fishery, the season was adjusted to allow two open days in northern California in July.

This was done to reflect long-term changes in the marketing of sea urchin roe, which is changing from a large scale export product to a smaller scale domestic consumption product. These changes require a steadier supply, albeit in smaller

amounts, over the course of time. While opening the northern state to fishing for two days in July has helped, the sea urchin industry believes it could better meet market demands, without negatively affecting the resource, if a third day per week was open in July.

The proposed amendments would add a third day to the open season in July.

In northern California the weather plays a significant role in dictating available fishing days, independent of regulatory schemes. When bad weather prevents diving during the short open weekly seasons in the months of April through October the industry is frequently unable to meet its market commitments.

The proposed amendments would allow fishing in northern California (north of the Pigeon Point Lighthouse in San Mateo County) on any weekday of the week up to the number of open days per week as specified in the existing regulations (four days per week in April, May, September and October, three days per week in June and August and two days per week in July). If the aforementioned third day of the week for July is also adopted in this regulatory action, there would be up to three days per week open in July.

Existing regulation is silent on the need to possess fish landing receipts on board a vessel while fishing for red sea urchins.

To provide a reasonable means of confirming compliance with the limit on the number of days per week that may be fished in northern California, the proposed amendments would require that a copy of every fish landing receipt issued to a fisherman from the immediately preceding and then current week would have to be retained on board the vessel in areas subject to this provision.

The proposed regulations would also prohibit a sea urchin diver from being on board a vessel once he/she has fished for the allowed number of open days in a given week in those areas.

Even with these added safeguards, because this is a significant departure from historical means of setting open fishing periods, there may be concern about compliance and enforcement. As a final means of addressing that matter the Commission has an option of adopting this change with a sunset date provision that would automatically repeal the change on April 1, 2008 or 2009 or 2010 and reinstate the current named days of the week.

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 1050, 9054 and 9055, Fish and Game Code.

Reference: Sections 1050, 7850, 7852.2, 7857, 9054 and 9055, Fish and Game Code.

(c) Specific Technology or Equipment Required by Regulatory Change:

None.

(d) Identification of Reports or Documents Supporting Regulation Change:

Minutes from the January 21, April 15, July 29 and October 29, 2005 meetings of the Sea Urchin Advisory Committee.

(e) Public Discussions of Proposed Regulations Prior to Notice Publication:

No public meetings are being held prior to the notice publication. The 45-day comment period provides adequate time for review of the proposed amendments.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

Provide for transferability of sea urchin diving permits. This alternative was considered and rejected because the qualifying criteria for receiving a transferable permit could not be agreed upon within the sea urchin industry without the completion of a fishery management plan.

(b) No Change Alternative:

The no change alternative would keep the existing regulations in place. Once the number of annual renewed permits reaches 300, replacement permits would be issued on a one-for-one basis. The open season in July would remain at two days per week. Sea urchin divers in northern California would not be able to select their diving days based on weather considerations. Permit renewal timelines would remain the same.

(c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective as and less burdensome to the affected private persons than the proposed regulation.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The addition of one more day per week of fishing during the month of July is expected to enable sea urchin divers to supply their processors with a steadier supply. This, in turn, should help the processors supply their markets. Other proposed amendments would allow northern California sea urchin divers to work a specified number of days during April through October rather than work on named days of the week. This change is also expected to help northern California processors to supply their markets more reliably. Both of these proposed changes should assist California sea urchin businesses compete with those in other states and countries.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

(e) Nondiscretionary Costs/Savings to Local Agencies: None.

(f) Programs Mandated on Local Agencies or School Districts: None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

## Informative Digest/Policy Statement Overview

Current law (Section 9054, Fish and Game Code) provides that the Fish and Game Commission has the authority to adopt regulations for commercial sea urchin fishing. The law further specifies that the Commission may limit the number of sea urchin permits issued whenever necessary to prevent overutilization or to ensure efficient and economic operation of the fishery, either on a statewide basis or within selected geographic areas.

Existing regulation (Section 120.7, Title 14, California Code of Regulations) sets the conditions for commercial sea urchin fishing, including the issuance of new permits and open and closed fishing days.

Subsection 120.7(c) provides for permit renewal dates of June 30 without penalty and after June 30 but before August 1 with a \$50 late fee. Applications for renewal received or postmarked after July 31 are not considered.

The proposed regulations would advance those dates by two months to provide consistency with the renewal dates for other restricted access fisheries. Permits would have to be received or postmarked before April 30, or after April 30 but before June 1 with a \$50 late fee. Applications for renewal received or postmarked after May 31 would not be considered.

Current regulation (subsection 120.7(d)) provides for one new sea urchin diving permit to be available for each 10 permits that are not renewed from the prior license year. That ratio will change when the total number of permits issued drops below 300, when one new sea urchin diving permit would become available for each permit that is not renewed.

The proposed amendments would remove the change in ratio that is now provided for when the total number of permits drops below 300, and instead retain the ratio of one new permit for each 10 non-renewed permits, regardless of the total number of permits issued or not renewed.

The Department's License and Revenue Branch expects to move its office sometime during 2006. A non-substantive change is made in the mailing address.

Existing regulation (subsection 120.7(l)) sets the open days for fishing as seven days per week from November to March, four days per week in April, May, September and October, three days per week in June and August and two days per week in July.

The proposed amendments would add one day per week in the month of July so there would be a three-day per week open season from June through August.

Existing regulation sets the open days of the week from April through October by name throughout the state.

The proposed amendments would, instead, allow fishing in northern California (north of the Pigeon Point lighthouse in San Mateo County) on any weekday of the week, up to a total number of fishing days equal to the number of named days for the remainder of the state. Fishermen would be required to retain all landing receipts on board the vessel for the then current week and the immediately preceding week to provide a ready means of enforcing the limit on the number of days a person may fish.

Fishermen would also be prohibited from being present on a vessel once they had fished for the allowable number of days in that particular week.

The Commission will have an option to adopt the regulations regarding the days fished in northern California either without a sunset date or with a sunset date of two, three or four years.